

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

WELLINGTON INDUSTRIES, INC.

and

Case 7-CA-061568

LOCAL 174, INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO

and

INDEPENDENT UNION LOCAL ONE
Party to the Contract

Mary Beth Foy, Esq., for the General Counsel.
Stanley C. Moore, III, Esq. (Plunkett Cooney),
Bloomfield Hills, Michigan, for the Respondent.
Robert D. Fetter, Esq. (Miller, Cohen, P.L.C.)
Detroit, Michigan, for the Charging Party

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Detroit, Michigan on December 5, 2011. The Charging Party, UAW Local 174, filed the charge on July 22, 2011.¹ The General Counsel issued the complaint on September 11, 2011. This case is closely related to one heard by Judge Keltner Locke in February 2011. The Board affirmed Judge Locke's May 2, 2011 decision in the prior case on December 9, 2011, a few days after the trial in this instant proceeding, 357 NLRB No. 135.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

¹ The charge names "New West Side Local 174" as the charging party. It is signed by Sheila Draper, Financial Secretary of Local 174.

FINDINGS OF FACT

I. JURISDICTION

Respondent, Wellington, Industries, a corporation, manufactures stampings for the auto industry at its facility in Belleville, Michigan, where it annually sells and ships goods valued in excess of \$50,000 to points outside of the State of Michigan. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Independent Union Local One is a labor organization within the meaning of Section 2(5) of the Act. There is no dispute that UAW Local 174 is also a labor organization. Respondent merely contests the proposition that UAW Local 174 represents any of its employees.

II. ALLEGED UNFAIR LABOR PRACTICES

As stated in Judge Locke's decision, as affirmed by the Board, Independent Local Union One has represented production and maintenance employees at Respondent's Belleville, Michigan facility for over 20 years. On August 8, 2010, 38 bargaining unit members out of approximately 128 attended a meeting regarding affiliation with UAW Local 174. Those attending this meeting voted to affiliate with Local 174 by a vote of 30 to 6, with 2 abstentions. Sometime afterwards, 75 employees signed a petition calling for another vote regarding affiliation. The petition alleged that there was insufficient notice with regard to the August 8, 2010 affiliation vote. Respondent has relied on this petition in refusing to recognize the affiliation of Local One with the UAW or to meet or have any dealings with UAW personnel, and more specifically UAW Local 174 President John Zimmick.

On September 28, 2010, Respondent filed a petition with the Board challenging the affiliation of Local Union One with UAW Local 174, 7-RM-1496. The Regional Director dismissed this petition administratively. He also dismissed a RD decertification petition. The Board affirmed the Regional Director's dismissal of the RM petition on February 11, 2011 in an unpublished order. There is no indication in this record that the Board's dismissal of the RM petition or the Regional Director's dismissal of the RD petition have been appealed.

Local Union One began negotiations for a successor collective bargaining agreement with Respondent in May 2010. On December 2, 2010, the parties signed the agreement. Shortly before the contract was agreed upon, Local One proposed to have Zimmick attend bargaining sessions. On November 8, 2010, Respondent refused to attend any bargaining session at which Zimmick was present.

On December 9, 2011, the Board affirmed Judge Locke's conclusion that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to negotiate with Local Union One if Zimmick was present at the collective bargaining sessions, 357 NLRB No. 137. In a footnote, the Board noted that it had already reviewed the validity of the affiliation and declined to reconsider it.

The instant complaint alleges that Respondent violated Section 8(a)(5) and (1) by failing to provide information requested by Local Union One on July 12, 2011 and refusing to allow

John Zimmick to attend a grievance hearing regarding discipline issued to unit member Shane Cook.

On May 26, 2011, Zimmick sent Respondent a letter on UAW Local 174 letterhead² requesting attendance records for unit employees since November 15, 2010; discipline records for attendance policy violations; paid absent days, leaves that had been granted and those that had been denied with a statement of the reasons for Respondent's decisions on leave requests. Mark Roggero, a unit employee who is President of Local Union One and UAW Chairperson, was sent a courtesy copy of this letter.

Zimmick sent an almost identical second request to Respondent on June 3, 2011, on UAW Local letterhead with a cc to Roggero. On June 8, he sent a request, also on UAW letterhead, for detailed job descriptions for 8 job classifications, stating that this information was needed to determine which, if any, employees would qualify for UAW journeyman cards. He repeated this request on June 16.

On July 12, Zimmick sent another letter on Local 174 letterhead to Respondent attaching the first four letters and renewing its information requests. It also asked that Respondent specify in writing whether Zimmick would be allowed to represent unit members at every step of the grievance procedure. The most significant difference between this letter and the earlier letters is that it is cosigned by Mark Roggero in his capacity as President of Local One.

On June 13, 2011, Mark Roggero handed Respondent's Human Resources Manager, Gary Sievert, a slip of paper notifying Respondent that John Zimmick wanted to attend a grievance hearing regarding disciplinary action taken against unit member Shane Cook. About a week later, Sievert informed Roggero that Respondent would not allow Zimmick to attend this hearing.

Respondent concedes that it has not provided any of the information requested to the Union. It also does not dispute that it has refused to permit John Zimmick or any other representative of UAW Local 174 to participate in the grievance process generally or specifically in the Shane Cook hearing. Its sole defense to the allegations in this case is that the affiliation of Independent Union Local One with UAW Local 174 is invalid and that therefore it has no obligation to bargain with or deal in any manner with representatives of UAW Local 174.

The Board's February 11, 2011 Order dismissing the RM petition and its December 9, 2011 decision are dispositive of the instant case. The Board has already considered the validity of the affiliation, found it valid and has declined to reconsider this issue.

Thus I conclude that Respondent violated Section 8(a)(5) in refusing to provide information to Local Union One through John Zimmick and refusing to allow John Zimmick to assist Local One in grievance proceedings including the Shane Cook grievance, because Independent Local Union One is validly affiliated with Local 174 of the UAW.

² Independent Union Local One does not have an office or computer and apparently has no letterhead either.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Wellington Industries, Inc. Belleville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide Local Union One information through John Zimmick or any other representative of UAW Local 174.

(b) Refusing to permit John Zimmick or any other representative of UAW Local 174 from assisting Independent Local Union One, an affiliate of UAW Local 174, in any part of the grievance process.

(c) In any like or related manner refusing to recognize or bargain with Independent Local Union One, as an affiliate of UAW Local 174, as the exclusive representative of its employees in the certified unit.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide to the Union, through John Zimmick, the information previously requested as set forth in the complaint.

(b) Permit John Zimmick and any other representative of UAW Local 174 to participate in any part of the grievance process.

(c) Within 14 days after service by the Region, post at its Belleville, Michigan facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 20, 2011.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., January 9, 2012.

Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to provide Independent Union Local One information that it requests concerning information relevant to its representational duties, including information requested through Local 174 of the UAW, with which Local One is legally affiliated.

WE WILL NOT refuse to allow Independent Union Local One to obtain assistance from Local 174 of the UAW, with which Local One is legally affiliated, in any part of the grievance process, including attendance at grievance hearings and arbitrations.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide to the Independent Union Local One the information previously requested through UAW Local 174. WE WILL provide that information to representatives of UAW Local 174 if requested to do so.

WE WILL permit representatives of UAW Local 174 to assist Independent Union Local One in any part of the grievance process, including attendance at hearings and arbitrations.

WELLINGTON INDUSTRIES, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

477 Michigan Avenue, Room 300, Detroit, MI 48226-2569

(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 226-3244.